

CX – 27



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

JAN 22 2016

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-101

Certified Mail – Return Receipt Requested

NOTICE OF VIOLATION – REQUEST FOR INFORMATION

Mr. Dave Erlanson, Sr.
P.O. Box 46
Swan Valley, Idaho 83449

Re: Suction Dredge in South Fork Clearwater River

Dear Mr. Erlanson:

This letter concerns an alleged violation of the Clean Water Act, 33 U.S.C. § 1251 et seq., for the discharge of pollutants from a suction dredge owned and/or controlled by you in the South Fork Clearwater River, near Elk City, Idaho, without authorization under a National Pollutant Discharge Elimination System (NPDES) Permit. By this letter, the U.S. Environmental Protection Agency (EPA) is providing you with notice of the alleged violation of the Clean Water Act and requesting additional information regarding those activities.

The EPA received information that you were operating your suction dredge on July 22, 2015, in the South Fork Clearwater River, near Mile Marker 39 Highway 14. The South Fork Clearwater River is a water of the United States. Additionally, this section of the South Fork Clearwater River is listed as critical habitat for threatened species including bull trout, Chinook salmon, and steelhead trout, and is also listed as a Clean Water Act Section 303(d)-impaired water for sediment and temperature.

Pursuant to Section 301 of the Clean Water Act, 33 U.S.C. § 1311, an individual must obtain a Clean Water Act Section 402 NPDES Permit to discharge pollutants, such as rock and sand from a suction dredge, into a water of the United States. The EPA issued an NPDES General Permit in 2013 for small suction dredge operations in Idaho. However, Part I.D.4 of the General Permit prohibits discharges from suction dredges in habitat designated as critical habitat under the Endangered Species Act (ESA) unless an ESA determination has been made through another process, such as a U.S. Forest Service Plan of Operations (discussed in more detail below), and the decision is provided with the Notice of Intent for coverage under the Permit. Our records indicate that the EPA informed you of this requirement by letter dated October 3, 2014; the return receipt was signed by you on October 8, 2014.

A Plan of Operations is required by the U.S. Forest Service to suction dredge along streams that contain threatened or endangered species within the Nez Perce-Clearwater National Forest. Before approving such Plans of Operations, the U.S. Forest Service must first consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to ensure that effects of actions they authorize are not likely to jeopardize the continued existence of threatened or endangered species. In March of 2015, the Nez Perce-Clearwater National Forest announced that they were initiating a combined environmental analysis for small-scale placer

mining (suction dredging) in the South Fork Clearwater River, as well as French and Orogrande Creeks. A draft Environmental Assessment was released for public comment on December 18, 2015. Because the U.S. Forest Service has not completed their consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, suction dredging within the South Fork Clearwater River cannot be covered by the NPDES General Permit. See the following U.S. Forest Service website for more information: <http://www.fs.usda.gov/resources/nezperceclearwater/landmanagement/resourcemanagement>.

As stated in our October 2014 letter, if your operation does not fit the terms and conditions of the General Permit, you may apply for an Individual NPDES Permit. Our records indicate that you have not applied for nor received an Individual NPDES permit for your operation on the South Fork Clearwater River.

VIOLATION

The discharge of pollutants from a suction dredge into a water of the United States without authorization under an NPDES Permit is a violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Violations of the Clean Water Act may result in liability for statutory civil or administrative penalties.

INFORMATION REQUEST

In exercising its responsibilities under the Clean Water Act, the EPA requests information from you. The EPA is authorized to make this Information Request pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318. *The EPA requires this information to evaluate whether you are in compliance with the Clean Water Act.*

Your response to this Information Request must be postmarked within forty five (45) days of receipt of this letter. All responses must be submitted to Tara Martich of my staff at the following address:

Tara Martich
U.S. Environmental Protection Agency
222 W. 7th Avenue, Box #19
Anchorage, AK 99513

For each day that you operated a dredge on the South Fork Clearwater River in July and August 2015, provide:

1. The name(s) and address(es) of the owner(s) of the mining claim (if suction dredging was conducted on a mining claim);
2. The name(s) and address(es) of the dredge owner(s) and operator(s);
3. A map indicating the precise locations where suction dredge activities took place;
4. The size of the dredge hose (e.g., 4", 6" etc.);
5. The engine horsepower;
6. The number of hours dredged;
7. Approximate amount of soil/fill moved in cubic yards;
8. Length in feet of downstream plume created by each dredge;
9. Ounces of gold collected; and
10. Any photographic and/or video documentation taken of the dredging activity.

Your submission must be signed with the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of


the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Failure to provide all the information requested, the failure to adequately explain the basis for such failure, or the making of any false material statement or representation in response to this Request for Information constitutes a violation of Section 308 of the Clean Water Act, 33 U.S.C. § 1318, and may result in an enforcement action and the imposition of civil and/or criminal penalties or fines pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Title 18 of the United States Code, 18 U.S.C. § 1001.

Although the information requested must be submitted to the EPA, you are entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. Part 2, Subpart B. If the EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, the EPA may make the information available to the public without further notice to you.

If you have any questions regarding this letter or other matters related to your compliance with environmental laws, please contact Tara Martich, Compliance Officer, at (907) 271-6323. If you have any legal questions, please contact Endre Szalay, Assistant Regional Counsel, at (206) 553-1073.

Sincerely,



Edward J. Kowalski
Director

cc: Mr. John Cardwell
Idaho Department of Environmental Quality